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10/562,387

05/11/2006

Christiaan Michiel Ten Bruggenkate

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7590

10/30/2009

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER

500 W. MADISON STREET

SUITE 3800

CHICAGO, IL 60661

EXAMINER

EIDE, HEIDI MARIE

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

10/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/562,387

Applicant(s)TEN BRUGGENKATE,
CHRISTIAAN MICHIEL**Examiner**

HEIDI M. EIDE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 28, 2009 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Mena 2002/0102518.

Mana teaches an intra-osseous implant capable of placement in bone of a human body comprising at least one intra-osseous part intended for placement in bone tissue having an apical side 16 and a cervical side 12 and composed of a body friendly material (par. 19), which part is provided on its circumferential surface with a screw thread 18 running in the direction of and ending at the apical end (fig. 1) and a

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support part (fig. 3) present at the cervical side of the at least one intra-osseous part intended for supporting a prosthetic element (par. 3) characterized in that the intra-osseous part is provided with multiple grooves 22 (figs. 1-2) extending in longitudinal direction and over the entire length of the intra-osseous part, interrupting the screw thread into multiple interrupted screw thread part and the retention elements being provided with a profile exhibiting a shallow slope towards the apical side and a steep slope on the cervical side (fig. 1). Mana does not specifically teach the multiple interrupted screw thread parts serving as retention element allowing the placement of the implant in longitudinal direction into the bone tissue but preventing the removal of the implant in opposite longitudinal direction out of the bone, but the device is capable of functioning as claimed therefore the claimed limitations are met. Mana further teaches the depth of the groove is equal to the height of the screw thread (fig. 2); the intra-osseous part has a cylindrical cross section (figs. 1-3)

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4, 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mena 2002/0102518 as applied to claim 1 above, and further in view of Alvaro 6,099,312. Mena teaches the invention as discussed above, however, does not teach

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the grooves are present in an equidistant manner in the circumference surface, the width of the groove varies in the direction of the apical side of the intra-osseous part more particularly it widens. Alvaro teaches grooves are present in an equidistant manner in the circumference surface (fig. 2), the width of the groove varies in the direction of the apical side as illustrated in fig. 4, however does not specifically teach it widens in the direction of the apical side, however, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mena in view of Alvaro since it has been held that the configuration of the claimed implant was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed implant was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 IV B) and since the current application teaches the varying width of the groove as a matter of obvious design choice.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mena 2002/0102518 as applied to claim 1 above, and further in view of Vogt et al. 2004/0096804 (Vogt). Mena teaches the invention as discussed above, however does not teach the depth of the grooves varies in the direction of the apical side of the intra-osseous part and more particular becomes larger. Vogt teaches the groove becomes larger in the direction of the apical side as illustrated in fig. 5B. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mena in view of Vogt since it has been held that such a modification would have involved a

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mere change in the size of a component which is recognized as being within the level of ordinary skill in the art (*In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955) MPEP 2144.04 IV A).

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mena 2002/0102518 as applied to claim 1 above, and further in view of Misch et al. 5,954,504 (Misch). Mena teaches the invention as discussed above, however, does not teach the height of the screw thread varies in the direction of the apical side of the intra-osseous part and more in particular becomes smaller. Misch teaches the height of the screw thread varies in the direction of the apical side of the intra-osseous part and more in particular becomes smaller as illustrated in fig. 5. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mena in view of Misch since it has been held that such a modification would have involved a mere change in the size of a component which is recognized as being within the level of ordinary skill in the art (*In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955) MPEP 2144.04 IV A).

5. Claims 10-11 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mena 2002/0102518 as applied to claim 1 above, and further in view of Kanomi et al. (Kanomi). Mena teaches the invention as discussed above, however does not teach the intra-osseous part has a near cylindrical cross section, for example, conical, elipsonal, oval cross section or a polygonal cross section more specifically a

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hexagonal or octagonal cross section. Kanomi teaches an oval and polygonal cross section (col. 7, ll. 47-49). Kanomi does not specifically teach a hexagonal or octagonal cross section, however, it would have been an obvious matter of design choice to one having ordinary skill in the art since Kanomi teaches a polygonal cross section which hexagonal and octagonal are. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mena in view of Kanomi since it has been held that the configuration of the claimed implant was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed implant was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 IV B).

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mena 2002/0102518. Mena teaches the invention as discussed above, however, does not teach the intra-osseous part becomes smaller in the apical direction in combination with all the limitations of claim 1. Niznick, however, does teach the intra-osseous part becomes smaller in the apical direction as illustrated in fig. 2. It would have been obvious to one having ordinary skill in the art to modify Mena to include the intra-osseous part becomes smaller in the apical direction since it has been held that the configuration of the claimed implant was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed implant was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 IV B).

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mena 2002/0102518 as applied to claim 1 above, and further in view of Lonca 4,722,688. Mena teaches the invention as discussed above, however, does not teach the support part is positioned under an angle on the intra-osseous part with respect to the direction of the implant. Lonca teaches the support part is positioned under an angle on the intra-osseous part with respect to the direction of the implant as illustrated in figs. 4a-4b (col. 4, ll. 20-23). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mena in view of Lonca in order to provide a prosthetic in desired position preferred by the user.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mena 2002/0102518 as applied to claim 1 above, and further in view of Daftary 5,759,034. Mena teaches the invention as discussed above, however, does not teach the support part is provided with at least one bevel on its circumferential edge. Daftary teaches the support part is provided with at least one bevel on its circumferential edge as illustrated in fig. 2. It would have been obvious to one having ordinary skill in the art to modify Mena in view of Daftary since it has been held that the configuration of the claimed implant was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed implant was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 IV B).

Response to Arguments

Applicant's arguments filed September 28, 2009 have been fully considered but they are not persuasive. Applicant argues that the prior art of Mena does not teach the limitation of the retention element being provided with a profile exhibiting a shallow slope towards the apical side and a steep slope on the cervical side, but teach the opposite is not persuasive. As illustrated in fig. 1 and further shown in appendix I below, it can be seen that a shallow slope is facing towards the apical side and a steep slope (compared to the other side) is facing the cervical side, therefore the prior art clearly teaches this limitation.

In response to applicant's argument that the interrupted screw thread parts do not serve as retention elements for allowing the placement of the implant in longitudinal direction in the bone but preventing the removal of the implant in opposite longitudinal direction out of the bone, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Further it is well known in the art that an implant, such as the one taught in the prior art, is designed to be screwed into the oral cavity in a longitudinal direction, and also designed to be retained in the oral cavity and not be pulled out in the opposite direction in which it was entered.

Conclusion

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. EIDE whose telephone number is (571)270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Heidi Eide
Examiner
Art Unit 3732

/Heidi M Eide/
Examiner, Art Unit 3732

10/27/2009

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732

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Appendix I

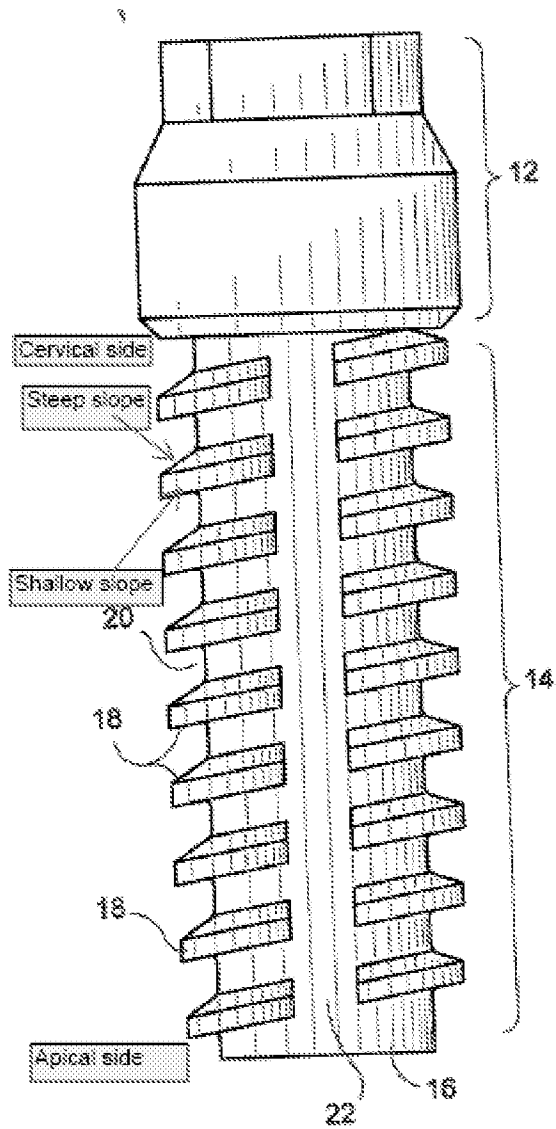


Fig. 1